Calendar No. 78

98TH CONGRESS
1st Session

SENATE

REPORT
No. 98–51

MAIL ORDER CONSUMER PROTECTION AMENDMENTS OF 1983

MARCH 31, 1983.—Ordered to be printed

Filed under authority of the order of the Senate of MARCH 24 (legislative day, MARCH 21), 1983

Mr. ROTH, from the Committee on Governmental Affairs, submitted the following

REPORT

[To accompany S. 450]

The Committee on Governmental Affairs, to which was referred the bill (S. 450) to amend title 39, United States Code, to strengthen the investigatory and enforcement powers of the Postal Service by authorizing certain inspection authority and by providing for civil penalties for violations of orders under section 3005 of such title (pertaining to schemes for obtaining money by false representations or lotteries), and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of this bill is to protect the public from being injured by false representation schemes to obtain money or property through the mails. This purpose is to be achieved by enabling the Postal Service to take more prompt administrative action against the operators of such schemes and by empowering the courts to penalize operators who violate the orders resulting from the administrative proceedings. In creating these powers, the bill establishes limits, controls, and oversight designed to guarantee their proper use.

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Background

A version of this legislation, S. 1407, was passed by the Senate during the 97th Congress. The original House version of the legislation, H.R. 3973, introduced by Representative Claude Pepper and cosponsored by some 300 Members of the House, was the subject of five days of hearings before the Subcommittee on Postal Personnel and Modernization of the Committee on Post Office and Civil Service. Following those hearings, a new House bill, H.R. 7044, was introduced and favorably reported by the House Committee. Ultimately, the House passed S. 1407 after substituting the text of H.R. 7044 as amended. The House-passed version of S. 1407 was returned to the Senate too late in the post-election session to be considered. S. 450 is substantially identical to the House-passed version of S. 1407. As compared with H.R. 3973 and the Senate-passed version of S. 1407, S. 450 and the House-passed version of S. 1407 represent a careful effort to narrow the original legislation to confer only those powers which have clearly been established as necessary to enable the Postal Service to protect the public from false representations schemes while meeting concerns expressed in regard to the original legislation. All seriously controversial provisions of the original legislation have been deleted or substantially modified.

S. 450 was the subject of a hearing before the Subcommittee on Civil Service, Post Office, and General Services, held on March 2, 1983. Testimony in support of the legislation was received from Senator Ted Stevens, Senator David Pryor, the National Newspaper Association, the Direct Marketing Association, the Association of American Publishers and the United States Postal Service. Testimony in opposition to the legislation was received from the National Health Federation and the Liberty Lobby.

Mail order shopping is estimated to be a $25 million business annually. It represents a convenient, easy, and energy-saving method of obtaining goods and services. The vast majority of mail order firms are responsible businesses, providing a purchasing alternative to consumers. Unfortunately, unscrupulous firms also exist, and those firms represent a genuine threat to unsuspecting consumers. The Postal Inspection Service has major responsibility for combating such false representation schemes.

According to testimony by Chief Postal Inspector Kenneth H. Fletcher on S. 1407 before the Subcommittee on Civil Service, Post Office, and General Services, false representation schemes using the mails involve hundreds of millions of dollars annually in consumer losses. Moreover, the Chief Postal Inspector cited schemes receiving $20,000 a day.

In his testimony supporting S. 1407, the Chief Postal Inspector described the Inspection Service to the Subcommittee as follows:

> The Postal Inspection Service is the investigative arm of the United States Postal Service. It has investigative jurisdiction over all violations of Federal criminal laws relating to the Postal Service. The postal crimes with which the inspection service must contend fall into two broad categories: First, those actions which involve a criminal attack upon the Postal Service or its employees such as armed robberies, burg-

laries, theft of mail, and assaults on postal employees; and, second, those which involve criminal misuse of the postal system itself such as mailing of bombs and pornography and, of course mail fraud.

The magnitude of these responsibilities is in direct proportion to the size of the Postal Service itself, which last year handled just over a hundred billion pieces of mail, and has about 650,000 employees, over 40,000 postal facilities, and cash income of about $18.7 billion.

The Inspection Service also has responsibility for internal audit in the Postal Service and for providing for the security of postal facilities and postal employees. To meet these responsibilities, we have about 2,000 postal inspectors; a uniformed security force of approximately 2,500 people; a variety of other support and administrative personnel; and six crime laboratories strategically located throughout the United States.

Regarding mail order consumer problems, Mr. Fletcher said:

The Inspection Service currently receives an average of about 200,000 mail fraud complaints each year. From October 1980 through June 30, 1981, we initiated over 2,100 mail fraud investigations. In relation to those varied responsibilities I previously described, the Inspection Service devotes 20 percent of its time to combating mail fraud.

Mr. Fletcher described the Postal Service's efforts to combat mail fraud and misrepresentation as follows:

While we feel successful criminal prosecution in these types of cases serves as a deterrent to others, the conviction of the offender is often of little solace to those who lost their money. The ideal solution is, of course, to prevent individuals from being victimized in the first place.

We believe a substantial reduction in crime can be accomplished through a combination of public awareness and a lessening of opportunity for the criminal. We think the efforts of this subcommittee in holding this hearing are very helpful in increasing public awareness.

In an effort to heighten public awareness of mail fraud schemes, we have selected and trained inspectors as consumer protection specialists. They have appeared on hundreds of radio and TV interview programs—have addressed thousands of civic and consumer groups, as well as prepared articles for numerous newspapers and magazines. We have also prepared several brochures which address specific type schemes.

In addition, the Inspection Service contacts newspapers and magazine publishers to advise them of action taken by the Postal Service against fraudulent work-at-home and medical schemes which were promoted through advertisements placed in their respective publications.

Where frauds have been committed, we used a two-pronged attack. Criminal prosecution is considered under title 18, United States Code, Section 1341 (the mail fraud statute).

> This is one of the Nation's older consumer protection laws. The law is quite simple but not very broad. Essentially, whoever uses or causes the mails to be used in a scheme to defraud is in violation of the mail fraud statute.
>
> Additionally, we consider administrative action under title 39, United States Code, Section 3005. This section permits the Postal Service, upon proper showing before an administrative law judge, to withhold and return to the sender, mail addressed to anyone who solicits monies through the mail by false representations. In addition, the Postal Service may request the U.S. District Court in the area where the promoter receives mail to issue a temporary restraining order under title 39, United States Code, Section 3007. This restraining order stops delivery of mail until the administrative law judge renders a decision. In fiscal year 1981, we initiated administrative action against 454 various promotions nationwide.

Charles P. Nelson, Assistant Chief Postal Inspector for Criminal Investigations, in testimony supporting S. 450, described the bill as providing two valuable tools to improve the enforcement of the false representations statute:

> First, the bill would authorize the Postal Service to obtain, upon tender of the advertised price, any article or service being offered for sale by mail. An unreasonable failure, as determined by a United States district court, to provide the article or service could be considered, for purposes of 39 U.S.C. § 3007, in determining whether probable cause exists to believe that section 3005 is being violated. Upon such a determination the court may order the Postal Service to temporarily detain the respondent's mail pending completion of Section 3005 proceedings. The purpose of this provision is to counter a practice whereby unscrupulous promoters, by means of false advertising, induce people to send orders for items that are not as advertised and then postpone filling the orders until after the advertising has run its course or, in some cases, forever. Proceedings under Section 3005 typically turn on a showing by the Postal Service of a significant discrepancy between what is stated in an advertisement and what is actually offered for sale. To show this discrepancy, the Postal Service generally must be able to obtain a sample of what is offered for sale. The longer a promoter may keep us from obtaining a sample of his product, the longer we must defer our proceedings and the less mail will ultimately be "stopped" if a mail stop order is issued. In our experience the time required to obtain the product often exceeds one month. The bill would reduce this source of delay by making the advertiser's unreasonable failure to sell us the advertised product or service a sufficient ground for a federal court, in its discretion, to take injunctive action under section 3007. Under Rule 65 of the Federal Rules of Civil Procedure, the courts are required to attempt to give notice to the defendant before issuing a temporary restraining order, which may last

only ten days unless extended for 10 additional days, and are required to provide notice before issuing a preliminary injunction which, in these cases, normally extends until termination of the administrative proceedings.

Second, the bill would remedy a weakness in the existing law resulting from the fact that it has little or no deterrent effect. The mail stop order that may eventuate from a current section 3005 proceeding is directed at blocking remittances responding to a particular false advertisement using a particular trade name and/or address. Only mail so addressed is affected. So far as the current statute is concerned, a promoter who wishes to continue the same false advertising scheme need only change his trade name and/or address and thereby escape the consequences of the outstanding mail stop order until we can complete additional administrative proceedings. It is common for promoters to repeatedly employ this tactic and in each case the public is injured in the interim between the resumption of the scheme and our completion of additional proceedings.

STATEMENT

This committee believes that S. 450 would significantly improve the ability of the Postal Service to deal with mail-order schemes which defraud the public through false representations.

Section 2(c) of S. 450 would authorize improved investigation authority by giving the Postal Service authority to more promptly obtain evidentiary samples of products or services offered for sale by mail through suspected false representations by allowing the Postal Service to tender the advertised price to a firm in order to gain immediate access to an advertised product so that an examination of the product or service could begin immediately. Before exercising this authority the Postal Service is required to prescribe regulations which require that the employee making the purchase identify himself, state the nature of the conduct under investigation and advise the person to whom the request is presented of the consequences of failure to comply. At present, the Postal Service obtains the necessary samples by mail order purchase which the seller has the opportunity—and often the proclivity—to defer supplying until after the advertising has run its course. A subsequent mail stop order would have a reduced, if any, effect as a means of preventing public injury. If a United States district court finds that there has been an unreasonable failure by any person to provide the requested article or service, such failure could be considered in determining whether probable cause exists, for purposes of the injunctive relief provisions section 3007, United States Code, to believe that such person is using the mails in the furtherance of a misrepresentation scheme.

It is important to note that the sole sanction of an unreasonable failure to provide an article or service under new subsection 3005(e)(1) would be an order, issued by the district court, to allow the Postal Service to detain mail pursuant to 39 U.S.C. § 3007. No administrative sanction is provided for unreasonable failure to comply.

It also is important to note that much of the text of this bill is contained in current statutes. With the exceptions of the new cease

and desist and test purchase authority (see subsections 2(a) and (2)(c)) the bill does not expand the authority of the Postal Service under the existing false representation statute (39 U.S.C. § 3005). This legislation does not expand the basic reach of the false representations statute. In point of fact, as will subsequently be explained, the bill reduces the existing authority of the Postal Service to proceed against advertising for books and other publications.

Mail stop orders and the proposed cease and desist orders may only be issued by the Judicial Officer of the Postal Service following procedures required by the Administrative Procedure Act (5 U.S.C. Chs. 5, 7), as presently applied to the Postal Service by 39 U.S.C. § 3001(f) and implemented in 39 C.F.R. Part 952.

The continued existence of this requirement in the statute should satisfy the suggestion of the National Newspaper Association that Section 3005 be amended to provide that its exercise by the Postal Service shall be governed by the Administrative Procedure Act.

Realizing that S. 450 increases the police powers of the Postal Service by granting it the power to issue cease and desist orders requiring a person or his representative to cease and desist from engaging in any fraudulent scheme, device, lottery, or gift enterprise, the Committee notes that such orders are to be issued only after a full adversarial hearing under the provisions of the Administrative Procedure Act contained in 5 U.S.C. Chs. 5, 7. Such procedures are currently required and will continue to be required in any Section 3005 proceeding, pursuant to 39 U.S.C. § 3001(f).

Additionally, the Committee wishes to make it clear that its intent is that such cease and desist orders are not to be issued against any publisher or publication which is carrying any advertisement concerning any such schemes, except if the publisher or publication is directly implicated in the scheme, and in that case only after actual notice and a full hearing pursuant to the Administrative Procedure Act.

The mail stop orders would continue, as at present, to be directed to postmasters as only they could "stop" mail. The cease and desist order authorized by Section 2(a) would be directed only against the promoter of the scheme or his agent in order that, upon resumption of the scheme, he would have been under prior notice and obligation to refrain from conduct which would give rise to the civil penalties proposed by Section 3 of S. 450.

Section 3 of S. 450 would greatly improve enforceability of the false representation statute by providing for the imposition of civil penalties where appropriate. Such penalties, which are modeled after similar FTC authorization, should serve as a deterrent to those who would evade orders issued under Section 3005. Section 3 of S. 450, would authorize a United States district court to impose a civil penalty, under the conditions imposed by the courts respecting enforcement of the FTC statute, for each violation of a cease and desist order by a person subject to the order or by any person, except publishers of newspapers and periodicals, having actual knowledge of the order and acting in privity with the person whose conduct was subject to the order.

Testimony from the National Health Federation expressed the view that publishers of periodicals carrying advertising of a promoter in violation of an outstanding cease and desist order would be subject to the civil penalty provisions of Section 3. This view is not consistent

with the language of the bill or its underlying intent. Proposed Section 3012(a)(3) specifically excludes publishers of newspapers and other periodical publications from those provisions which authorize the courts to apply the penalty to persons who, acting with actual knowledge of the existence of an order against someone, act in privity with him in violation of that order.

Civil penalties would be determined by a U.S. district court in an amount not to exceed $10,000 for each day that the defendant engages in prohibited conduct. Whenever the Postal Service, acting through the Department of Justice, finds that any person is engaged in such conduct, the Postal Service may commence a civil action to enforce the civil penalties established under section 3 of S. 450. The committee emphasizes that the $10,000 amount per day serves as a ceiling on the penalties which may be imposed upon each type of conduct to which the penalty applies, and in determining the amount of a civil penalty, the court is to take into account the nature, circumstances, extent, and gravity of the violation. With respect to the violator, the bill further provides that the court take into account such factors as ability to pay, effect on ability to conduct lawful business, any history of prior violations of the statute, the degree of culpability, and other matters as justice may require. Penalties collected in the enforcement of this section would be paid into the Treasury of the United States.

The committee believes that penalty proceedings would most appropriately be conducted by a district court rather than administrative law judges and S. 450, unlike the original House bill, so provides.

S. 450 also requires the Postal Service to report semi-annually to the Postal Service Board of Governors on its investigative activities, including a summary of administrative and civil actions initiated under Sections 3005 and 3007. Upon approval by the Board, such reports shall be submitted to the Congress. The committee believes that such matters are subjects which should be closely monitored by the Congress.

Two further matters require specific attention. First, it should be noted that inasmuch as this legislation anticipates civil litigation in the federal courts to enforce the test purchase and civil penalty provisions, existing statutory relations between the Postal Service and the Justice Department under 39 U.S.C. § 409(d) will continue.

Secondly, during the committee's deliberations, questions were raised about the Postal Service's enforcement of the false representation statute in cases involving advertisements for books and publications. The committee recognizes the sensitivity of such matters because of the protections provided by the First Amendment against government restrictions on the press. At the same time, false representations by advertisers of printed matter can result in serious and substantial losses to consumers. One example, described by Subcommittee Chairman Stevens, involved the losses and disappointment of persons purchasing by mail falsely advertising information concerning nonexistent high-salaried jobs in Alaska.

Testimony from the Association of American Publishers and the National Newspaper Association expressed concern that the existing Section 3005 could be abused when applied to advertising for books and other publications which express unpopular, unorthodox or invalid opinions and ideas. Although the Committee was not advised of any court decision which concluded that the Postal Service in en-

forcing Section 3005 had transgressed the First Amendment, the Committee believes it appropriate to establish statutory limits upon the Postal Service's exercise of its responsibility in this sensitive area.

The committee was advised of a policy established by the Federal Trade Commission with respect to Commission action against false advertising in the sale of publications. It was suggested that this policy—the so-called "Mirror Image Doctrine" (36 Fed. Reg. 13,414, July 21, 1971)—be incorporated, in appropriate statutory language, in 39 U.S.C. § 3005, as a limitation upon Postal Service enforcement of Section 3005 against mail order sales of publications.

The committee believes the version of the "Mirror Image Doctrine" set forth in Section 2(b) is a carefully considered effort to balance these interests.

Section 2(b) of the bill would amend 39 U.S.C. § 3005(d), by adding a new paragraph (3) to provide that nothing in section 3005 shall prohibit the mailing of an advertisement promoting the sale of a book or other publication, or a solicitation to purchase or a purchase order for any such publication, if (A) such advertisement is not materially false or misleading in its description of the publication, and contains no material misrepresentations of fact, (B) the advertisement accurately discloses the source of any statements quoted or derived from the publication, and (C) neither the publication nor the advertisement is designed to promote the sale of some other product as part of a commercial scheme. This new paragraph (3) is intended to preclude the Postal Service from bringing cases against persons who market books and other publications through the mails by means of advertisements that are not materially false or misleading in their description of the book or other publication.

This section is intended to preclude the possibility of any actions by the Postal Service that are founded on the theory that an advertisement for a book or publication contains a material misrepresentation of fact where the advertisement consists of no more than a materially correct description of the contents of the book or publication. This new paragraph (3) is not intended, however, to preclude the Postal Service from bringing cases against firms which market falsely advertised moneymaking opportunities, such as, but not limited to, the traditional envelope-stuffing schemes, and the more current promotions on how to obtain credit cards without a credit check or how anyone may obtain a signature loan by mail. The sale by mail of ideas and opinions, irrespective of their orthodoxy or validity, should be subject to Section 3005 only where the product to be received by the purchaser is materially misrepresented.

Testimony from the National Health Federation expressed concern that proposed section 3005(d)(3)(C) would have the effect of allowing the Postal Service to act against advertisements for many health books because they advocate the purchase of some other product. This is not the intent of paragraph (3)(C). This paragraph is concerned only with situations where the seller of the publication is using it as an advertising vehicle for the sale of some other product sold by him or his agent. For example, Assistant Chief Inspector Nelson testified concerning the operations of a seller of phony hair growth products. The principal advertising vehicle for the promotion of those products was a magazine, published by the seller of the products, which aroused

the interest of purchasers through allegedly valid articles by scientists who claimed to have achieved positive results through use of the miraculous ingredients in these products.

Illustration of the Bill's Provisions

Finally, it may be useful to provide the following illustration which outlines the intended procedures under section 3005 as amended by S. 450.

Assume that an advertisement offering electronic computer games for sale through the mails, at retail prices substantially below usual discount retail prices, is brought to the attention of the Postal Inspection Service. Information received from wholesalers establishes a basis for suspecting that the seller has no inventory or capacity to furnish the product at the advertised price. Under present law, the Inspection Service would either make a mail order "test purchase" to determine whether the seller is actually delivering the product—a process which could take a month or more depending upon the seller's willingness promptly to fill the order—or defer action until the public belatedly realizes that it has been cheated and begins to complain to the Postal Service. Under section 2(c), the Inspection Service could present the seller with an immediate, in person, test purchase request.

If this request is refused by the seller, section (2)(c) would allow the Postal Service, through the Justice Department, to seek an order from a district court allowing the Postal Service to detain mail in response to the advertisement pending completion of the 39 U.S.C. § 3005 administrative hearing on the merits. Proceedings pursuant to section 3005 would be initiated by the filing of a formal complaint with the Judicial Officer of the Postal Service. The complaint would be served upon the seller and assigned to an administrative law judge for formal adversary hearings pursuant to the Administrative Procedure Act (See 39 U.S.C. § 3001(f), 39 C.F.R. Part 952). Following the administrative hearing, the administrative law judge would issue a written Initial Decision recommending (or not) the issuance of a "mail stop order" pursuant to 39 U.S.C. § 3005(a). The Judicial Officer would review the entire record and issue (or not) the recommended order. Under new section 3005(a)(3) the Judicial Officer would also be authorized to order the seller to cease and desist from continuing the misrepresentation scheme. The Judicial Officer's decision would be subject to judicial revew by the Federal courts. If the seller had previously been ordered to cease and desist, section 3 of the bill would allow the Postal Service to seek a civil penalty in the district court for violation of the cease and desist order.

Major Provisions

The purpose of S. 450, the Mail Order Consumer Protection Amendments of 1983, is to strengthen the authority of the United States Postal Service in protecting consumers against misrepresentation perpetrated through the mails. The major provisions of this measure would amend title 39 of the United States Code in the following ways:

First, the Postal Service would be granted authority to tender the advertised purchase price to a firm in order to gain immediate access to

an advertised product so that a comparative examination between it and the advertising which invites its purchase could commence without delay.

Second, the courts would be authorized to impose a civil penalty in an amount up to, but not exceeding $10,000 per day against anyone who continues to engage in fraudulent schemes after having been found in violation of postal statutes and ordered to cease such activity.

Section-by-Section Analysis

SECTION 1.—SHORT TITLE

Section 1 of the bill provides for a short title: "The Mail Order Consumer Protection Amendments of 1983."

SECTION 2.—AMENDMENT TO SECTION 3005

Section 2(a) of the bill amends 39 U.S.C. § 3005(a) to provide that the Postal Service may issue orders to require persons to cease and desist from engaging in false representation schemes. Such orders—as with the Postal Service's existing authority to issue "mail stop" and "stop payment" orders under section 3005—may be issued only after opportunity has been given for a hearing on the record pursuant to the Administrative Procedure Act.

Section 2(b) of the bill amends 39 U.S.C. § 3005(d), adding a new paragraph (3) to provide that nothing in section 3005 shall prohibit the mailing of an advertisement promoting the sale of a book or other publication, or a solicitation to purchase or a purchase order for any such publication if (A) such advertisement is not materially false or misleading in its description of the publication, and contains no material misrepresentations of fact, (B) the advertisement accurately discloses the source of any statements quoted or derived from the publication and any opinions expressed about the publication, and (C) neither the publication nor the advertisement is designed to promote the sale of some other product as part of a commercial scheme. This new paragraph (3) is intended to assure the Postal Service does not bring cases against persons who market books and other publications through the mails by means of advertisements that are not materially false or misleading in their description of the book or publication.

Section 2(c) of the bill amends 39 U.S.C. § 3005 by adding new subsection (e) to provide that, in conducting an investigation to determine if a person is engaged in a false representation scheme of any of the other activities covered by subsection (a) of section 3005, the Postmaster General or his duly authorized agent may tender, at any reasonable time and by any reasonable means, the price advertised or otherwise requested for any article or service that such person has offered to provide through the mails. New subsection (e)(2) provides further that a failure to provide the offered article or service after the Postmaster General or his agent has reasonably tendered the money or property may be considered by the court (along with any reasons for such failure) in determining whether, for purposes of deciding whether to issue a temporary mail detention order pursuant to 39 U.S.C. § 3007, there is probable cause to believe a violation of 39 U.S.C.

§ 3005 has occurred. The new section 3005(e)(3), as added by Section 2(c) of the bill, requires the Postmaster General to prescribe regulations requiring that the Postal Service agent tendering the price identify himself, state the nature of the conduct under investigation, and inform the person that failure to honor the request may be presented to a court as a factor to be weighed by the court in deciding whether there is probable cause to issue a temporary mail detention order under 39 U.S.C. § 3007.

SECTION 3.—CIVIL PENALTIES; REPORTS TO CONGRESS

Section 3(a) of the bill provides judicial authority to impose civil penalties. Proposed 39 U.S.C. § 3012 authorizes the imposition of a penalty against any person who: (1) through the use of the mail, evades or attempts to evade the effect of a "stop mail" order issued under 39 U.S.C. 3005(a); or (2) fails to comply with a "cease and desist" order issued under 39 U.S.C. § 3005(a)(3); or (3) (unless he is a publisher of a newspaper or other periodical publication) with actual knowledge of such 39 U.S.C. § 3005(a) order, acts in privity with a person who is evading, attempting to evade, or failing to comply with such order, through the use of the mail. The penalty shall be in an amount not to exceed $10,000 for each day that the person engages in such conduct. Where appropriate, separate penalty may be assessed by the court with respect to each type of conduct described by Section 3012.

The new 39 U.S.C. § 3012(b) sets forth standards for determining whether a penalty should be imposed and, if so, how much. Subsection (b)(1) provides that, when the Postal Service believes that a person has engaged in, or is engaging in, conduct described in 39 U.S.C. § 3012(a), it may (acting through the Justice Department) commence a civil action in the appropriate U.S. district court to seek imposition of the authorized civil penalties. New subsection (b)(2) provides that the court shall first determine whether the person is engaging in or has engaged in such conduct. If the court determines that he has, it shall then determine the amount of the penalty, taking into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, his ability to pay, effect on his ability to conduct lawful business, history of prior violations, the degree of culpability, and such other matters as justice may require.

Section 3 of the bill also adds a new 39 U.S.C. § 3013, requiring twice-yearly reports to the Congress on the investigative activities of the Postal Service under the false representations statutes. It provides that the Postmaster General shall submit, semi-annually, reports to the Postal Service Board of Governors within 60 days after the close of the reporting periods ending March 31 and September 30, respectively. The reports shall include, with respect to the reporting period involved: (1) a summary of any proceedings instituted under 39 U.S.C. § 3005, and the results of those and any other such proceedings decided, settled, or otherwise concluded during such period; (2) the number of cases in which the purchasing authority described in the new 39 U.S.C. § 3005(e) was used; (3) the number of applications for temporary restraining orders or preliminary injunctions submitted

under 39 U.S.C. § 3007 (i.e., temporary mail detention orders) and, of those applications, the number granted; (4) the total expenditures and obligations attributable to these investigative activities of the Postal Service; and (5) such other information relating to the investigative activities of the Postal Service as the Board may require. Upon approval of each report submitted under this new section, the Board shall transmit it to the Congress.

Section 3(b) of the bill provides that the new 39 U.S.C. § 3012 shall apply with respect to conduct which occurs on or after the date of enactment.

Section 3(c) of the bill amends and conforms the chapter analysis for chapter 30 of title 39 to reflect the addition of the new sections 3012 and 3013.

SECTION 4.—CONSUMER EDUCATION PROGRAM

Section 4(a) of the bill provides for a consumer education program. It requires that, as soon as practicable after enactment, the Postmaster General or his designee, following consultation with representatives of the mail order industry, shall develop and carry out a program designed to provide consumer education to the public concerning schemes involving false representations through use of the mails. The program shall include the dissemination of information on recognizing practices commonly associated with such schemes, as well as information on appropriate measures to be taken upon receiving mail matter which the recipient believes may be part of such a scheme.

Section 4(b) of the bill requires that a summary of consumer education activities be included in the regular annual report of the Postmaster General.

Evaluation of Regulatory Impact

Paragraph 11(b)(1) of Rule XXVI requires each report accompanying a bill to evaluate "the regulatory impact which would be incurred in carrying out the bill."

The only regulatory impact associated with S. 450 will result from the provision requiring the Postal Service to report semi-annually to the Congress on its investigative activities and enforcement of Sections 3005 and 3007.

This is not a new regulatory authority since the Postal Service in the past has included investigatory information in its annual statements.

S. 450 does not authorize any additional regulation of activities in the private sector, impose any new record keeping or reporting requirements on any segment of the public, or abolish any existing regulations.

Estimated Cost of the Legislation

Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed the cost implications of S. 450. The following is CBO's estimate of the potential costs of this legislation:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., March 21, 1983.

Hon. WILLIAM V. ROTH, Jr.,
Chairman, Committee on Governmental Affairs, U.S. Senate, Dirksen Senate Office Building, Washintgon, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 450, the Mail Order Consumer Protection Amendments of 1983, as ordered reported by the Senate Committee on Governmental Affairs, March 17, 1983.

S. 450 would strengthen the investigatory powers of the Postal Service by authorizing certain inspection authority as well as establishing civil penalties for various mail order violations. It is expected that enactment of S. 450 would result in no additional cost to the federal government.

Enactment of this bill would not affect the budgets of state and local governments.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

JAMES BLUM
(For Alice M. Rivlin, Director).

ROLLCALL VOTE IN COMMITTEE

In compliance with paragraph 7(c) of rule XXVI of the Standing Rules of the Senate, the rollcall vote taken during committee consideration is as follows: 10 yeas; 0 nays.

YEAS—10	NAYS—0
Percy	
Stevens	
Cohen	
Durenberger	
Rudman	
Cochran	
Eagleton	
Sasser	
Levin	
Roth	

CHANGES IN EXISTING LAW

In compilance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no changes is proposed is shown in roman):

TITLE 39, UNITED STATES CODE

* * * * * * *

PART IV. MAIL MATTER

* * * * * * *

CHAPTER 30.—NONMAILABLE MATTER

Sec.

3001. Nonmailable matter
3002. Nonmailable matter vehicle master keys
3003. Mail bearing a fictitious name or address
3004. Delivery of mail to persons not residents of the place of address
3005. False representations; lotteries
3006. Unlawful matter
3007. Detention of mail for temporary periods
3008. Prohibition of pandering advertisements
3009. Mailing of unordered merchandise
3010. Mailing of sexually oriented advertisements
3011. Judicial enforcement
3012. Civil penalties
3013. Semiannual reports on investigative activities of the Postal Service

* * * * * * *

§ 3005. False representations; lotteries

(a) Upon evidence satisfactory to the Postal Service that any person is engaged in conducting a scheme or device for obtaining money or property through the mail by means of false representations, including the mailing of matter which is nonmailable under section 3001(d) of this title, or is engaged in conducting a lottery, gift enterprise, or scheme for the distribution of money or of real or personal property, by lottery, chance, or drawing of any kind, the Postal Service may issue an order which—

(1) directs the postmaster of the post office at which mail arrives, addressed to such a person or to his representative, to return such mail to the sender appropriately marked as in violation of this section, if the person, or his representative, is first notified and given reasonable opportunity to be present at the receiving post office to survey the mail before the postmaster returns the mail to the sender [and]

(2) forbids the payment by a postmaster to the person or his representative of any money order or postal note drawn to the order of either and provides for the return to the remitter of the sum named in the money or postal note[.]*; and*

(3) *requires the person or his representative to cease and desist from engaging in any such scheme, device, lottery, or gift enterprise.*

For purposes of the preceding sentence, the mailing of matter which is nonmailable under such section 3001(d) by any person shall constitute prima facie evidence that such person is engaged in conducting a scheme or device for obtaining money or property through the mail by false representations.

(b) The public advertisement by a person engaged in activities covered by subsection (a) of this section, that remittances may be made by mail to a person named in the advertisement, is prima facie evidence that the latter is the agent or representative of the advertiser

for the receipt of remittances on behalf of the advertiser. The Postal Service may ascertain the existence of the agency in any other legal way satisfactory to it.

(c) As used in this section and section 3006 of this title, the term "representative" includes an agent or representative acting as an individual or as a firm, bank, corporation, or association of any kind.

(d) Nothing in this section shall prohibit the mailing of (1) a newspaper of general circulation containing advertisements, lists of prizes, or information concerning a lottery conducted by a State acting under authority of State law, published in that State, or in an adjacent State which conducts such a lottery, [or] (2) tickets or other materials concerning such a lottery within that State to addresses within that State[.], *or (3) an advertisement promoting the sale of a book or other publication, or a solicitation to purchase or a purchase order for any such publication, if (A) such advertisement is not materially false or misleading in its description of the publication, and contains no material misrepresentations of fact, (B) the advertisement accurately discloses the source of any statements quoted or derived from the publication and any opinions expressed about such publication, and (C) neither the publication nor the advertisement is designed to promote the sale of some other product as part of a commercial scheme.* For purposes of this subsection, "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(e)(1) In conducting an investigation to determine if a person is engaged in any of the activities covered by subsection (a) of this section, the Postmaster General (or any duly authorized agent of the Postmaster General) may tender, at any reasonable time and by any reasonable means, the price advertised or otherwise requested for any article or service that such person has offered to provide through the mails.

(2) A failure to provide the article or service offered after the Postmaster General or his agent has tendered the money or property in the manner described in paragraph (1) of this subsection, and any reasons for such failure, may be considered in a proceeding held under section 3007 of this title to determine if there is probable cause to believe that a violation of this section has occurred.

(3) The Postmaster General shall prescribe regulations under which any individual seeking to make a purchase on behalf of the Postal Service under this subsection from any person shall—

(A) identify himself as an employee or authorized agent of the Postal Service, as the case may be;

(B) state the nature of the conduct under investigation; and

(C) inform such person that failure to complete the transaction may be considered in a proceeding under section 3007 of this title to determine probable cause, in accordance with paragraph (2) of this subsection.

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§ *3012. Civil Penalties*

(a) Any person—

(1) who, through the use of the mail, evades or attempts to evade the effect of an order issued under section 3005(a)(1) or 3005(a)(2) of this title;

(2) who fails to comply with an order issued under section 3005(a)(3) of this title; or

(3) who (other than a publisher described by section 3007(b) of this title) has actual knowledge of any such order, is in privity with any person described by paragraph (1) or (2) of this subsection, and engages in conduct to assist any such person to evade, attempt to evade, or fail to comply with any such order, as the case may be, through the use of the mail;

shall be liable to the United States for civil penalty in an amount not to exceed $10,000 for each day that such person engaged in conduct described by paragraph (1), (2), or (3) of this subsection. A separate penalty may be assessed under this subsection with respect to the conduct described in each such paragraph.

(b)(1) Whenever, on the basis of any information available to it, the Postal Service finds that any person has engaged, or is engaging, in conduct described by paragraph (1), (2), or (3) of subsection (a), the Postal Service may commence a civil action to enforce the civil penalties established by such subsection. Any such action shall be brought in the district court of the United States for the district in which such conduct occurred or in which the defendant resides, transacts business, or receives mail.

(2) If the district court determines that a person has engaged, or is engaging, in conduct described by paragraph (1), (2), or (3) of subsection (a), the court shall determine the amount of any civil penalty under this section, taking into account the nature, circumstances, extent, and gravity of the violation or violations of such subsection, and, with respect to the violator, the ability to pay the penalty, the effect of the penalty on the ability of the violator to conduct lawful business, any history of prior violations of such subsection, the degree of culpability, and such other matters as justice may require.

(c) All penalties collected under authority of this section shall be paid to the Treasury of the United States.

§ 3013. Semiannual reports on investigative activities of the Postal Service

The Postmaster General shall submit semiannual reports to the Board summarizing the investigative activities of the Postal Service. One semiannual report shall be submitted for the reporting period beginning on October 1 and ending on March 31, and the other semiannual report shall be submitted for the reporting period beginning on April 1 and ending September 30. Each such report shall be submitted within sixty days after the close of the reporting period involved and shall include with respect to such reporting period—

(1) a summary of any proceedings instituted under section 3005 of this title, and the results of those and of any other such proceedings decided, settled, or otherwise concluded during such period;

(2) the number of cases in which the authority described in section 3005(e) of this title was used;

(3) the number of applications for temporary restraining orders or preliminary injunctions submitted under section 3007 of this title and, of those applications, the number granted;

(4) the total amount of expenditures and obligations incurred in carrying out the investigative activities of the Postal Service; and

(5) such other information relating to the investigative activities of the Postal Service as the Board may require.

Upon approval of a report submitted under the first sentence of this section, the Board shall transmit such reports to the Congress.

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